

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

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| PAUL MCCURLEY, III, individually and on behalf of all similarly situated individuals, |) |
| |) |
| Plaintiffs, |) |
| |) |
| v. |) |
| |) |
| FLOWERS FOODS, INC. and DERST BAKING COMPANY, LLC, |) |
| |) |
| Defendants. |) |
| |) |
| |) |

**CIVIL ACTION NO:
5:16-cv-00194-JMC**

FIFTH AMENDED SCHEDULING ORDER

Pursuant to the Federal Rules of Civil Procedure and the Local Civil Rules of this Court, the following schedule is established for this case.

1. **Discovery.** Plaintiff seeks to pursue this case as an FLSA collective action and a Rule 23 class action. As such, the parties have agreed and the Court orders that discovery shall be conducted in two phases. Discovery Phase 1, which was limited to discovery regarding section 216(b) conditional certification issues, has ended.

- A. **Discovery Phase 2:** The Court has granted conditional certification of a collective action (Dkt. 69.), and the parties will conduct the second phase of discovery as to the certified class(es). In the second phase of discovery, which shall consist of general discovery on the merits per Rule 26, Rule 23 class certification issues, damages, decertification issues (if appropriate), and any other appropriate matters, the following schedule shall apply:

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|-------------------------------------|----------------|
| Plaintiff's Expert disclosures due: | April 16, 2018 |
| Defendants' Expert disclosures due: | May 16, 2018 |
| Phase 2 Discovery Ends: | July 16, 2018 |

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| Plaintiff's Motion for Rule 23 Class Certification (if appropriate): | 30 days after Phase 2 discovery ends or sooner. Defendants shall have 30 days from the filing of the motion in which to file a Response. Plaintiff's Reply, if any, shall be filed within 15 days of Defendants' Response. |
| Defendants' Motion to Decertify (if appropriate): | 30 days after Phase 2 discovery ends or sooner. Plaintiff shall have 30 days from the filing of the motion in which to file a Response. Defendants' Reply, if any, shall be filed within 15 days of Plaintiff's Response. |
| Motions for Summary Judgment: | 45 days after Phase 2 discovery ends or the Court rules on Defendants' Motion to Decertify (if such motion is filed), whichever occurs latest. |
| Mediation: | The parties will conduct mediation, per the Court's Order to Conduct Mediation dated February 22, 2016, by no later than 30 days following the end of Phase 2 discovery. ¹ |

2. Counsel shall file and serve affidavits of records custodian witnesses proposed to be presented by affidavit at trial no later than **30 days before Phase 2 discovery ends**. Objections to such affidavits must be made within fourteen (14) days after the service of the disclosure. (See Fed. R. Evid. 803(6), 902(11), or 902(12) and Local Civil Rule 16.02(D)(3)).
3. Discovery shall be deemed completed within the deadlines set forth above only if discovery is initiated at such time as to afford the responding party the full time provided under the applicable rule of the Federal Rules of Civil Procedure in which to respond prior to the discovery completion date(s) noted above.

(The parties may, with the consent of all counsel, conduct discovery up to the time of trial, provided the deadlines in this order are not affected.)

4. All other motions, except (a) those relating to the admissibility of evidence at trial and (b) those to compel discovery, shall be filed no later than **30 days after Phase 2 discovery ends**. (Fed. R. Civ. P. 16(b)(2)). See below ¶ 6 for motions in limine deadline.

¹ As of the date of the Consent Motion for Fifth Amended Scheduling Order, the parties had scheduled mediation for December 7-8, 2017.

5. No later than **30 days prior to the date set for jury selection**, the parties shall file and exchange Fed. R. Civ. P. 26(a)(3) pretrial disclosures. Within fourteen (14) days thereafter, a party shall file and exchange Fed. R. Civ. P. 26(a)(3) objections, any objections to use of a deposition designated by another party, and any deposition counter-designations under Fed. R. Civ. P. 32(a)(6).
6. Motions in limine must be filed no later than **30 days prior to the date set for jury selection**.
7. Parties shall furnish the Court pretrial briefs seven (7) days prior to the date set for jury selection (Local Civil Rule 26.05). Attorneys shall meet at least seven (7) days prior to the date set for submission of pretrial briefs for the purpose of exchanging and marking all exhibits. See Local Civil Rule 26.07.

The Court directs the parties' attention to Local Rule 7.00 which governs motion practice. Hearings on motions are not automatic. The Court may decide motions without a hearing. If a party opposes a motion which has been filed, that party must file a response to the opposed motion within fourteen (14) days of the date the motion was filed. If no such response in opposition is filed, the Court will assume that the party consents to the Court's granting the motion.

IT IS SO ORDERED.

s/J. Michelle Childs
J. MICHELLE CHILDS
UNITED STATES DISTRICT JUDGE

DATED: October 2, 2017.